IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8794 of 2007
With
SPECIAL CIVIL APPLICATION No. 8795 of 2007
With
SPECIAL CIVIL APPLICATION No. 8944 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMANBHAI SOMABHIA SENMA & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR TEJAS P SATTA for Petitioner(s) : 1 - 2.
MS TRUSHA PATEL ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/05/2007
CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

All these petitions challenge the decision of respondent No.2-Election Officer rejecting the petitioners' nomination forms for elections to Sarpanch of three different gram panchayats.

2. The nomination forms are rejected by the Election Officer on the ground that the nomination forms did not give the correct serial numbers of the candidate/proposer in the voters' lists. The impugned orders were passed by the respective Election Officers on 28.3.2007 which was the date of scrutiny of nomination forms. The present petitions were filed on or about 30.3.2007. The elections of Sarpanch of the respective gram panchayats were thereafter held on 8.4.2007. The candidates who were declared successful at such elections have not been joined as party respondents. The respective-Election Officers have filed their affidavit-in-reply contesting the petitions and justifying their orders.

3. At the hearing of these petitions on 17.4.2007, Mr DB Rana with Mr Satta for the petitoiners, Mr Nilay Anjaria for the State Election Commission and Ms Trusha Patel, learned AGP for the Election Officer were heard.

4. Having considered the rival submissions, we are not inclined to express any opinion on the merits of the controversies sought to be raised in the petitions only because the elections have already been held, the results are declared and the successful candidates have not been joined as party respondents. Besides, as per the settled legal position, any person aggrieved by any decision of the Election Officer rejecting the nomination forms has the remedy of challenging such decision, after conclusion of the elections and after the results are declared, by moving the election petition before the Election Tribunal. Such Election Tribunal is

constituted under the provisions of Section 31 of the Gujarat Panchayats Act, 1993.

5. In view of the above, while we are not inclined to entertain these petitions, in the facts and circumstances of the case and having regard to the decision of the Apex Court in Danda Rajeshwari vs. Bodavula Hanumayamma, 1996 (6) SCC 199, we are of the view that the discretionary jurisdiction of this Court is required to be exercised for directing that in case the petitioners file election petitions before the Election Tribunal under the Gujarat Panchayats Act, 1993 within three weeks from today, the Election Tribunal shall entertain the same on merits and hear and decide the same in accordance with law without raising any objection about limitation and as expeditiously as possible and preferably within four months from the date of filing the election petitions.

It is directed accordingly.

6. The petitions are disposed of in terms of the above directions. Subject to the above directions, notice is discharged.

We may not be treated to have expressed any opinion on the merits of the controversies sought to be raised in these petitions.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

zgs/-